Strict restrictions in Council Regulation No 4/2009 and HC 2007: is there a way out?

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Central Authorities are appointed with the specific functions of locating the debtor or creditor or of helping to obtain relevant information concerning the income and other necessary financial circumstances (Art. 51 para. 2 lit. b and c Council Regulation [CR] No 4/2009; Art. 6 para. 2 lit. b and c Hague Convention [HC] 2007). Applications for assistance may be processed promptly but the outcome of the application will not be the provision of the relevant information needed to recover child support:

- In the EU Central Authorities are only allowed to disclose the information to the competent courts, the competent authorities responsible for service of documents and the competent authorities responsible for enforcement of a decision (Art. 62 para. 1 CR No 4/2009). Requests for special measures to obtain information about the income of the debtor that did not lead to voluntary disclosure have the consequence that the information is not submitted to the requesting Central Authority but withheld by the requested Central Authority (Art. 53 para. 2 in conjunction with Art. 61 CR No 4/2009).
- Under the Hague Convention 2007 any authority processing information shall ensure its confidentiality in accordance with the law of its State (Art. 39 HC 2007). For example, tax data from the Internal Revenue Service (IRS) in the United States concerning refunded income may only be disclosed to a competent court,

The effect of these provisions is that applicants cannot be provided with the required information. Instead they will simply receive a notification from their Central Authority saying that the relevant information has been obtained but cannot be disclosed to the applicant. The data protection provisions raise several questions and problems:

- In cases where a debtor is located and the creditor wants to submit a lawsuit to the competent court, the applicant cannot include an address for service of summons. Courts have to be asked to approach the Central Authority of their State to submit the relevant information.
- Even higher obstacles apply to cases in which the amount of a child support claim cannot be specified because the income of the debtor is unknown to the creditor and the latter does not disclose the information voluntarily. Because of the obligatory withholding of the information by the requested Central Authority the obligor either has to litigate a cause in the foreign state – with all its imponderabilities of processing a case under the statute of the national child support or family maintenance law of an non-familiar legal system – or is restricted to raising a claim of the amount that can be ordered without proof of sufficient income in the state of his/her habitual residence.
- Particular obstacles arise when a debtor or creditor wants to negotiate an agreement instead of filing a lawsuit and enforcement. In these cases the non-disclosure of information about the summonable address other than to a court seems to contradict the specific function of Central Authorities to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable, by use of mediation, conciliation or similar processes (Art. 51 para. 2 lit. d CR No 4/2009; Art. 6 para. 2 lit. d HC 2007).

The unintended results are obvious. The presentation will report about first experiences with the Council Regulation No 4/2009 In this respect, the presentation will also discuss how Central Authorities are trying to find adequate approaches to comply with the non-disclosure requirements and will look into ways how to solve the practical problems without breaking the rules on the protection of the personal data.